

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN FREDERICK GORE,

Defendant-Appellant.

UNPUBLISHED

January 29, 2008

No. 274784

Macomb Circuit Court

LC No. 2006-002211-FC

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

MEMORANDUM.

Following a jury trial, defendant appeals as of right from his convictions for armed robbery, MCL 750.529, and resisting arrest, MCL 750.81d(1). Because the trial court did not abuse its discretion by admitting the challenged testimony, the prosecutor's remarks during closing argument did not deprive defendant of a fair and impartial trial, and reversal based on cumulative error is unwarranted, we affirm.

Defendant first argues that the trial court abused its discretion by admitting hearsay evidence of the police dispatcher's statements regarding the nature of the police call. A police officer's testimony regarding a dispatcher's statement is not hearsay if it is offered to explain why the police did what they did after receiving the report. *People v Lewis*, 168 Mich App 255, 266-267; 423 NW2d 637 (1988). Here, the testimony was offered to explain why the police came to the scene, ordered the security guards out of the way, and began struggling with defendant. It was not offered to prove that defendant had shoplifted and was armed with a hypodermic needle. Therefore, the trial court did not abuse its discretion by admitting this testimony. *Id.*

Defendant next argues that the prosecutor committed misconduct by withdrawing from a stipulation and by personally attacking defense counsel. Prosecutorial misconduct claims are reviewed de novo to determine whether a defendant is denied his right to a fair and impartial trial. *People v Cox*, 268 Mich App 440, 450-451; 709 NW2d 152 (2005). Here, the prosecutor committed misconduct by arguing that the needle was not found in the left sleeve of defendant's jacket where the only evidence regarding the location of the needle was the stipulation that the needle was found in the left sleeve. But, the misconduct did not deny defendant a fair and impartial trial where the trial court stated twice that everyone agreed that the needle was found in

the left sleeve of defendant's jacket and the prosecutor discontinued that argument after defendant's objection and the trial court's statements. *Id.*

Defendant also argues that the prosecutor denigrated defense counsel by arguing that defense counsel was asking the jury to look at the evidence "with blinders on" and see the evidence only one way. However, the prosecutor's remarks were in response to defense counsel's arguments regarding how the evidence should be viewed and were not improper. *People v Kennebrew*, 220 Mich App 601, 607-608; 560 NW2d 354 (1996). Therefore, the prosecutor's remarks during closing arguments did not deny defendant a fair and impartial trial.

Finally, defendant argues that cumulative errors denied him a fair trial. "Absent the establishment of errors, there can be no cumulative effect of errors meriting reversal." *People v Dobek*, 274 Mich App 58, 106; 732 NW2d 546 (2007). As discussed above, only one error was found and thus defendant has not established a cumulative effect of errors requiring reversal.

Affirmed.

/s/ Richard A. Bandstra
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto